

STATE OF MICHIGAN
COURT OF APPEALS

In re CERISANO, Minors.

UNPUBLISHED
October 24, 2017

No. 337122
Delta Circuit Court
Family Division
LC No. 15-000134-NA

Before: K. F. KELLY, P.J., and BECKERING and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

I. RELEVANT FACTS AND PROCEEDINGS

Petitioner, the Department of Health and Human Services (DHHS), sought custody of respondent's twin infants a month after their birth based on allegations that respondent's abuse of controlled substances and prescription medications during her pregnancy contributed to their premature birth and to complications from that birth, including the inability to eat or breathe independently and symptoms consistent with drug withdrawal. The children were born at 24 weeks and six days; both tested positive for cocaine at birth, with one also testing positive for marijuana. Subsequent to a preliminary hearing in June 2015, the trial court entered an order removing the children from respondent's care and placing them with petitioner for care and supervision.¹

The preliminary hearing continued on July 2, 2015, at which time respondent pleaded to using cocaine and marijuana during pregnancy. On July 16, 2015, respondent signed an agreement stating in relevant part that she would refrain from using alcohol or illegal substances, would not have alcohol, alcohol containers, drugs, or drug paraphernalia about her home, would not associate with known drug users, convicted drug users, or known criminals, and would not have guests unapproved by DHHS in her home between 9:00 p.m. and 7:00 a.m. Subsequent to

¹ The children remained hospitalized in a neonatal intensive care unit at the time.

a July 22, 2015 dispositional hearing, the trial court accepted the case service plan agreed to by respondent and entered an order instructing that the children be placed with respondent's mother once they were released from the hospital. The trial court also allowed respondent to reside with her mother.² Respondent's case service plan called for weekly drug screens, attendance at Narcotics Anonymous (NA) meetings three times a week, attendance at any recommended parenting classes, and continued visitation with the children, who remained in the hospital.

In the following months, respondent made substantial progress toward rectifying the barriers to reunification with her children, and received good reports during hearings held October 14, 2015, January 7, 2016, April 4, 2016, and May 16, 2016. At the January 2016 hearing, petitioner recommended returning the children to respondent's care and custody with continued court and DHHS jurisdiction. At the April 2016 hearing, although reports were that respondent continued to make progress, the court expressed concern over the fact that the man whom respondent thought to be the children's father was living with her and the children at her mother's house, yet he was uninterested in establishing legal paternity. In addition, respondent told the court that she did not plan on his being part of the children's life in the long term. Noting that the putative father had been involved in a domestic violence incident with respondent's stepfather in December 2014, the trial court expressed wonder at DHHS's authorizing the putative father to live in the house. Accordingly, the trial court stated that unless the man was out of the house by 4:00 on the day of the hearing, the trial court would order the children removed from the home and placed in foster care. In addition, the trial court told respondent that staying with her mother had been an interim measure, but the next step toward terminating the trial court's jurisdiction over the children was to obtain her own housing. By the May 2016 hearing, respondent had a fit residence and a job. The trial court wanted at the next hearing to see information from respondent's healthcare providers regarding her recovery from substance abuse addiction, and it ordered additional screening measures to ensure that respondent was drug free. The trial court instructed DHHS to help respondent with budgeting, afforded it the discretion to grant respondent overnight visitation with her children, and scheduled a review hearing for June 27, 2016.

² Petitioner recommended against placing the children with respondent's mother while respondent was also living at the mother's home because the arrangement was contrary to DHHS policy. Aware that ordering an arrangement that went against DHHS recommendation would jeopardize federal funding unless the trial court gave DHHS a full hearing on the matter to justify the trial court's reason, the court took testimony from DHHS regarding the policy and what it thought would be in the best interests of the children. Lindsey Meyer, foster-care worker for DHHS, testified that the policy disallowed a parent's living in the same home with a child who is in the care of DHHS, but did not know the precise reason for the policy. Meyer also testified that, given the substantial needs of the children once they were released from the hospital, and respondent's need for support to stay drug-free and follow the case service plan, she thought letting the children and respondent live at respondent's mother's house would be in the children's best interests and respondent's best interests.

By the June 2016 review hearing, respondent's progress had stalled. On the morning of the hearing, the prosecutor filed a motion and order to show cause against respondent, alleging that she was in violation of the court-approved case service plan and that she had interfered with a June 25, 2016 police investigation. The trial court first addressed the show cause motion. Respondent acknowledged that during the night of June 24, 2016 and the early morning of June 25, 2016, she consumed alcohol at a local bar, in violation of the court's order not to possess or consume alcohol. The trial court sentenced her to ten days in the county jail and suspended the sentence upon condition that she follow the case service plan and court orders in the future. In the dispositional review portion of the hearing, petitioner recommended a return to supervised visitation with no overnights, but asked the court for discretion to award unsupervised visitation if respondent's consumption of alcohol proved a one-time occurrence. Petitioner also noted that respondent had been untruthful in her account of the incident to her caseworker, and had left the children with an unapproved caregiver (respondent's grandmother), even though she had been counseled against this in the past.

Respondent struggled to comply with her case service plan. At the September 26, 2016 dispositional review hearing, the trial court heard testimony that respondent was violating the restriction placed on having unapproved visitors in her home from 9:00 p.m. until 7:00 a.m. Although by the time of the hearing respondent had moved to a different residence, one of her former neighbors testified to concerns about foot traffic in and out of respondent's (former) apartment, claiming that she saw approximately 40 different men go into respondent's apartment during the evening hours, and saying she suspected "an escort service type thing going on." She also stated that on one occasion she and her husband had followed respondent and had observed her participate in what they thought was a drug deal. Respondent testified that she thought the visitation restriction applied only when she had the children at her apartment. The trial court found that respondent was not following the case service plan because she had a show cause for alcohol consumption and was allowing inappropriate people into her home. The trial court also noted testimony that respondent's substance abuse counselor had some concerns about respondent's truthfulness.

On the morning of the December 19, 2016 dispositional review hearing, petitioner filed a supplemental petition requesting termination of respondent's parental rights. The trial court authorized the petition after meeting with the parties in chambers, and petitioner served the supplemental petition on respondent. At the hearing, respondent's caseworker testified that, during the last review period, respondent had had three positive substance screens, one for alcohol and two for THC, and had been observed drinking at a bar. In addition, the caseworker testified that respondent did not use her parenting time correctly, had not been attending any doctor appointments or Women, Infants, and Children (WIC) appointments, had avoided contact with the caseworker on two occasions, and had individuals who were safety risks for the children in her home on multiple occasions. The trial court found that respondent had failed to make progress during the review period, reiterated its approval of petitioner's filing the supplemental petition, and set the date for a hearing on the termination of respondent's parental rights.

At the time of the January 25, 2017 termination hearing, respondent was incarcerated in the Delta County Jail; she appeared in the courtroom in restraints. Escanaba Patrol Sergeant Darren Smith testified that, on December 31, 2016, at approximately 3:18 a.m., he pulled respondent over after receiving a report from a snowplow operator who had witnessed

respondent's vehicle swerve and intentionally try to strike two individuals, one of whom was respondent's boyfriend, and who had a criminal history. Officer Smith testified that respondent was intoxicated, and that she admitted to drinking and acknowledged that she was drunk. The officer further testified that damage to respondent's vehicle was consistent with a body hitting the windshield, and that there were alcohol containers in the front passenger seat of the vehicle, some of which were open.

In addition to respondent's various lapses from her case service plan, respondent's caseworker testified that respondent tested positive for alcohol on October 27, 2016, had tested positive for marijuana on November 30, 2016 and December 14, 2016, and had avoided drug screens in November and December 2016. The caseworker also testified that respondent became unemployed in mid-December, and told her during a visit at the jail that she had started consuming alcohol in June 2016 and had not stopped since. Additionally, the caseworker testified to respondent's continued association with men who had provided her with drugs in the past, and described a recent unannounced visit to respondent's home during which one of the caseworker's colleagues found a man who turned out to have a criminal history hiding in respondent's bedroom closet.

The trial court found that the conditions that led to adjudication continued to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time. Respondent continued to have substance abuse problems, continued to spend time with inappropriate men, lost her job, and had no home. The trial court found that respondent failed to provide proper care and custody to her children because "[s]he's found herself in jail" and was arrested for drunk driving, driving on a suspended license, and felonious assault for intentionally hitting one or more pedestrians. The trial court noted that respondent had accepted money from "various men," further noting her claim that she did not know why the men sent her money. The trial court found that there was a reasonable likelihood the children would be harmed if returned to respondent because she had no home and was awaiting prosecution. Accordingly, the trial court found clear and convincing evidence of statutory grounds for termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j) .

The trial court then heard testimony on the best interests of the children. Respondent's caseworker testified that respondent had not fully benefited from services and that respondent's substance abuse and current incarceration caused concern about the appropriateness of her being around the children. She further testified that the children were bonded with their maternal grandmother (respondent's mother), that the grandmother was willing and intended to adopt the children, and that this grandmother was now a licensed foster home provider. It was further established that respondent continued to abuse substances, lie, and have inappropriate individuals in her home, and that at times throughout the proceedings respondent had said that she intended to voluntarily terminate her parental rights and that if her parental rights were terminated she would want her children to stay with her mother.

The trial court found that there was a strong bond between the grandmother and the two children. Although the trial court found that a bond existed between respondent and the children, the court also found that respondent's engagement with the children had diminished, and that she was increasingly preoccupied with her own life. The trial court found that the children had a strong need for permanency. It recounted the events that led to respondent's incarceration,

noting that they occurred while respondent knew a termination petition was pending. Further the court noted that respondent had shown “extremely poor judgment,” and questioned how she was going to progress if she lied even to her substance abuse counselor. The Court found that, pursuant to MCL 712A.19b(5), grounds for termination existed and it was in the children’s best interests to terminate respondent’s parental rights, concluding:

The Court sees no hope, not even a reasonable possibility of hope that she’s going to reestablish a fit home for these children. A guardianship is not a sufficient permanency. There is already stress and strife between mother and the grandmother. A guardianship is not nearly as, even under the juvenile guardianship statute, it’s not nearly as permanent as an adoption. Numerous reasons overrule the fact that the child is in a relative care placement. And therefore, I find that [it] is in the best interest of both children that the parental rights be terminated . . . at this time.

II. ANALYSIS

A. STANDARD OF REVIEW

We review a trial court’s findings that a ground for termination has been established, and that termination is in the best interests of the children, under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Only one statutory ground is required for termination. *In re Powers Minor*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

B. STATUTORY GROUNDS

Respondent first argues that the trial court erred in finding that clear and convincing evidence established the statutory bases for terminating her parental rights. We disagree.

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182. Clear and convincing evidence is evidence that

“produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in an issue.” [*In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).]

The trial court terminated respondents' parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent contends that the trial court erred by relying on her association with inappropriate companions, i.e., a condition to which she did not plead, as providing grounds for termination pursuant to 19b(3)(c)(i). This argument has merit. The initial petition focused entirely on respondent's use of controlled substances during pregnancy, respondent pleaded at the adjudication hearing to using cocaine and marijuana during pregnancy, expressly denying the use of alcohol because of its connection to fetal alcohol syndrome, and the trial court's initial orders required respondent to submit to weekly drug screens. While respondent's alcohol use and continued association with people who had provided her with drugs in the past became a clear problem as the case wore on, there is no indication that they were conditions leading to the initial adjudication. However, even if the trial court erred by relying on these conditions as grounds to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), we find no error in the trial court's finding that clear and convincing evidence established grounds to terminate under 19b(3)(g).

As indicated above, termination under MCL 712A.19b(3)(g) requires the trial court to find that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child" and that there is "no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." After the hospital

released the children and they went to live with respondent's mother, respondent initially did well during her supervised parenting time, at one point progressing to overnight, unsupervised visits with the children. However, the record shows that, from approximately May 2016 until December 2016, respondent did not establish a fit residence for more than a few months at a time and changed or lost jobs several times. In addition, in violation of her agreement from July 16, 2015, and of the trial court's repeated admonishments, respondent continued to consort with and take money from men from her past who had supplied her with drugs, and to invite into her home people who had criminal histories. Further, from June 2016 onward, respondent's alcohol and drug use increased; during this time, respondent's substance abuse counselor expressed concerns about respondent's truthfulness, and respondent avoided drug screens and dodged contact with her caseworker. Finally, driving a car loaned her by a known drug supplier, and operating with a suspended license and under the influence of alcohol, respondent attempted to run over her alleged boyfriend, a known felon, and another person. Consequently, at the time of the termination hearing, respondent was facing a future made uncertain by pending prosecution for felonious assault.

In short, there is no record evidence that, during the 18 months respondent's children were under the jurisdiction of the trial court, respondent had been able to provide proper care and custody of them. Further, respondent's ongoing struggles with alcohol and controlled substances, and the consequences of her accompanying emotional instability and poor judgment, demonstrated that there was no reasonable expectation she would be able to provide proper care and custody to her children within a reasonable time, given their age. Accordingly, we conclude that the trial court did not clearly err in finding clear and convincing evidence establishing grounds for termination pursuant to MCL 712A.19b(3)(g). Because only one statutory ground is required for termination, we need not consider the trial court's findings under subsection (j). *In re Powers Minors*, 244 Mich App at 118.

C. BEST INTERESTS

Respondent next argues that the trial court erred in finding that termination of respondent's parental rights was in her children's best interests. Again, we disagree.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). A trial court must find by a preponderance of evidence that termination is in a child's best interests. *In re Moss*, 301 Mich App at 89. Factors to consider include the child's bond to the parent; the parenting ability of the respondent; the child's need for permanency, stability, and finality; and a comparison between the parent's home and the child's foster home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court can also consider "the length of time the child was in care, the likelihood that 'the child could be returned to her parents' home within the foreseeable future, if at all,' and compliance with the case service plan." *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015), quoting *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). In addition, the Court may consider "the child[]'s well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). Finally, "the fact that the children are in the care of a relative at the time of the termination hearing is an 'explicit factor to consider in

determining whether termination was in the children's best interests.' ” *In re Olive/Metts*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). “A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.” *Id.* at 43.

The trial court found that the children had a strong bond with their grandmother, with whom they had lived since their release from the hospital. The trial court noted that the children had a bond with respondent, but that over the course of the previous few months respondent had been less engaged with the children and “more preoccupied with her own life.” The trial court found that the children had “a strong need for permanency,” especially given their physical needs, and that respondent had failed to “turn her life around” to be able to provide for their needs, even though she had had 18 months to do so. The trial court also noted that a guardianship with the children's grandmother would not provide sufficient permanency because “[t]here is already stress and strife between the mother and the grandmother” and a guardianship was “not nearly as permanent” as adoption. The trial court explicitly addressed whether termination would be appropriate in light of the children's placement with relatives and concluded that “[n]umerous reasons overrule the fact that the child[ren] [are] in a relative care placement.” Given the record, the trial court's analysis and conclusions do not leave us with a definite and firm conviction that the trial court made a mistake. *In re Mason*, 486 Mich at 152. Consequently, we conclude that the court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering
/s/ Michael J. Riordan